

## Regulatory Update: EPA Withdraws RCRA Exclusion for Emission Comparable Fuel

by Anthony B. Cavender and Stella Dorman

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*On June 15, 2010, EPA withdrew a conditional exclusion from regulation under the hazardous waste rules of the Resource Conservation and Recovery Act (RCRA) for Emission Comparable Fuel (ECF), which had become effective on January 20, 2009.*

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In an earlier rulemaking proceeding, EPA revised RCRA rules 40 CFR Section 261.4(a)(16) and 40 CFR Section 261.38 to include ECF under the comparative fuel regulatory exclusion. The new rule allowed ECF to be used as a fuel without adherence to the standard RCRA regulatory requirements. Following that action, we issued an [Advisory](#) which described these changes. However, on further review, EPA has now determined that ECF, which consists of fuels produced from energy-rich hazardous secondary materials, is more appropriately classified as a discarded material and regulated as a hazardous waste under RCRA. Accordingly, all facilities managing ECF are subject to all applicable RCRA Subtitle C rules, conditions and standards. The agency noted that the January 2009 exclusion was accompanied by a set of very detailed conditions, which would have made the exclusion very difficult to implement and regulate.

EPA has also noted that the other clarifications and rule revisions that were a component of the superseded rulemaking and which apply to the comparable fuel category have not been disturbed and remain intact. Please see revised 40 CFR Section 261.38 and the discussion published at 75 Fed. Reg. 33712 at 33714 (June 15, 2010).

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